approved Form I–854 to allow an S nonimmigrant to adjust status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny. A denial of an adjustment application under this paragraph may not be renewed in subsequent deportation proceedings.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

19. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

§ 248.2 [Amended]

20. In § 248.2, paragraph (b) is amended by removing the term ''or (K)'' and adding in lieu thereof the term ''(K), or (S)''.

21. Section 248.3 is amended by adding a new paragraph (h) to read as follows:

§ 248.3 Application.

* * * * *

(h) *Change to S nonimmigrant classification.* An eligible state or federal law enforcement agency (''LEA''), which shall include a state or federal court or a United States Attorney's Office, may seek to change the nonimmigrant classification of a nonimmigrant lawfully admitted to the United States, except those enumerated in § 248.2 of this chapter, to that of an alien witness or informant pursuant to section 101(a)(15)(S) of the Act by filing with the Assistant Attorney General, Criminal Division, Form I–539, Application to Extend/Change Nonimmigrant Status, with the appropriate fee, and Form I–854, Inter-Agency Alien Witness and Informant Record, with attachments establishing eligibility for the change of nonimmigrant classification.

(1) If the Assistant Attorney General, Criminal Division, certifies the request for S nonimmigrant classification in accordance with the procedures set forth in 8 CFR 214.2(t), the Assistant Attorney General shall forward the LEA's request on Form I–854 with Form I–539 to the Commissioner. No request for change of nonimmigrant classification to S classification may proceed to the Commissioner unless it has first been certified by the Assistant Attorney General, Criminal Division.

(2) In the event the Commissioner decides to deny an application to change nonimmigrant classification to S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

22. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

23. Section 274a.12 is amended by adding a new paragraph (c)(21) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(21) A principal nonimmigrant witness or informant in S classification, and qualified dependent family members.

* * * * *

PART 299—IMMIGRATION FORMS

24. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

25. Section 299.1 is amended by adding the entry for ''Form I–854'' to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–854	June 20, 1995.	Inter-Agency Alien Witness and Informant Record.

* * * * *

26. Section 299.5 is amended by adding the entry for ''Form I–854'', to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	* * *	*
I–854	Inter-Agency Alien Witness and Informant Record.	1115–0196
*	* * *	*

Dated: August 18, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–21113 Filed 8–24–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket 95–21]

RIN 2125–AD61

General Material Requirements; Warranty Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is revising its regulation that generally prohibits the use of guaranty and warranty clauses on Federal-aid highway construction contracts. This action will permit greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

DATES: This interim final rule is effective August 25, 1995. Written comments must be received on or before October 24, 1995.

ADDRESSES: Submit signed, written comments to FHWA Docket No. 95–21, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments

received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James Daves, Office of Engineering, (202) 366–0355 or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The current regulation pertaining to warranty clauses, found at 23 CFR 635.413, generally prohibits their use on Federal-aid highway construction contracts, with limited exceptions. There is no statutory mandate requiring this prohibition. This regulation was issued in 1976 and is a formulation of a longstanding FHWA policy against the use of warranties. The rationale for the prohibition is that warranty provisions can indirectly result in Federal-aid participation in maintenance costs. Prior to 1991, maintenance was a Federal-aid non-participating item. However, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, amended 23 U.S.C. 119 to include an interstate maintenance funding category. Section 1009 of the ISTEA revised 23 U.S.C. 119 to include preventive maintenance on existing interstate routes as an eligible item. Preventive maintenance activities are eligible for Federal-aid highway funds when a State highway agency (SHA) can demonstrate, through its pavement management system, that such activities are a cost-effective means of extending interstate pavement life.

In addition, over the past 5 years, the FHWA has gained experience with warranty clauses through its efforts with Special Experimental Project No. 14 (SEP 14) ''Innovative Contracting Practices.'' The June 1995 FHWA publication entitled ''Rebuilding America: Partnership for Investment, Innovative Contracting Practices,'' gives an overview of and discusses SEP 14. It identifies applications where warranties may enhance the quality of a Federal-aid construction project. That publication has been placed on the docket and is available for inspection at the above address.

For the above reasons, the FHWA is revising the current warranty clause regulation to permit SHAs to include warranty provisions covering specific construction products or features in National Highway System (NHS) Federal-aid contracts, but maintenance items not eligible for Federal-aid funds cannot be included. As already permitted, pursuant to section 1016 of the ISTEA, the SHAs may continue to follow their own procedures regarding the inclusion of warranties in non-NHS Federal-aid contracts.

In 1981, a notice of proposed rulemaking (NPRM) (46 FR 9642) was issued by the FHWA which would have revised the warranty regulations to provide that States may specify warranty requirements where the FHWA agrees that such provisions are consistent with the State's responsibility to maintain the completed project in accordance with 23 U.S.C. 116. Four comments were received; one supported, two opposed, and one asked for clarification of the proposed regulation. Due to a lack of consensus, this action was not finalized.

In 1985, the FHWA issued an advance notice of proposed rulemaking (50 FR 4234) to request information on how warranty clauses might affect the quality of construction and competition on Federal-aid construction projects. While a number of specialty contractors (e.g., signing and joint sealant) favored the expanded use of warranty provisions, comments received from the trade associations and general contractors generally opposed any change in policy. Due to a lack of favorable documentation and strong support for a change, no revision was made to the regulations.

In 1990, the FHWA initiated SEP 14 to evaluate innovative contracting practices. The intent of SEP 14 is to develop a data base for use in making future decisions regarding the applicability of nontraditional contracting practices to Federal-aid highway construction projects. The use of warranty provisions is an innovative practice which has been evaluated by eight SHAs. Under SEP 14, the FHWA has approved warranty concepts with the objective of improving quality and increasing contractor accountability without shifting the maintenance burden to the contractor. Ordinary wear and tear damage caused by normal usage and routine service maintenance have remained the responsibility of the SHAs.

The 1990 European Asphalt Study Tour and the 1992 European Concrete Study Tour, both jointly sponsored by the FHWA and AASHTO (American Association of State Highway and Transportation Officials) and participated in by Federal, State, and private industry representatives, reported that many European countries provide contractors great latitude in the selection of materials and designs. Warranties, varying from 1 to 5 years, are used to hold contractors accountable for their decisions. The 1993 FHWA Contract Administration Techniques for Quality Enhancement Study Tour (CATQEST), also participated in by representatives from all segments of the United States highway community, visited four European countries and examined their use of warranties. The CATQEST team concluded that ''a wide divergence of opinion appears to exist across country boundaries and within individual countries regarding the value of warranty requirements. Some believe they have a positive, decisive influence on sustained high quality. Others seem convinced that quality would not be diminished if warranty requirements were eliminated.''

In 1991, the Congress directed the General Accounting Office (GAO) to conduct a study on means to improve the quality of Federal-aid highways. The GAO report, ''Highway Infrastructure: Quality Improvements Would Safeguard Billions of Dollars Already Invested'' was published in September 1994. The report concluded that, while the SHAs that have utilized warranty clauses have generally been satisfied with the results, the SHAs' limited experiences with warranties make it difficult to assess their costs and benefits.

The SEP 14 has provided valuable information to the FHWA regarding the use of warranties. The SEP 14 currently includes 23 projects with warranty provisions in eight States. Warranties for asphaltic concrete pavement, bridge painting, bridge expansion joints and pavement markings have been included. Durations have varied from 1 to 5 years. The GAO in its 1994 report stated:

> With few exceptions, state officials told us (GAO) that they have generally been satisfied with their experiences, on the basis of preliminary observations or final results from 23 of the 33 warranted projects undertaken to date. These officials' satisfaction resulted from both the initial quality of the workmanship and the opportunity to obtain remedial action when necessary.

One SHA official commenting on two bridge painting projects with warranties stated ''These warranted projects are of the highest quality ever obtained in this State for bridge painting.'' Another SHA engineer commented about an asphaltic concrete pavement project with a warranty. On this project the pavement developed distress only 3 months after construction, and the contractor was ordered to repair it under warranty. The engineer felt that notifying the contractor to do the repairs, without

using SHA funding for the repairs, was an effective use of public funds. The evaluation, reporting, and feedback procedures included in SEP 14 have provided the FHWA with an impetus to revise the existing warranty regulation, and give SHAs more flexibility to use warranties in Federal-aid contracts.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at anytime after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

The FHWA has determined that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this interim final rule, in amending the FHWA's regulation on guaranty and warranty clauses in Federal-aid highway construction contracts to permit States to include such clauses, does not impose any new obligation or requirement on the States or highway contractors. Instead, it simply enables any State to include warranty clauses in Federal-aid highway construction contracts if the State determines that such clauses would be beneficial. In addition, to the extent that warranty clauses have been found to enhance the quality of highway construction projects, prior notice and opportunity for comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B) because this action of lifting the general prohibition against their use gives States the flexibility to include these potentially beneficial clauses in their construction contracts. For these same reasons, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information.

This interim final rule is effective upon its date of publication. Because this action removes the prohibition against the use of guaranty and warranty clauses on Federal-aid highway construction contracts, it ''relieves a restriction'' in accordance with 5 U.S.C. 553(d)(1) and, therefore, is exempt from the 30-day delayed effective date requirement of that section. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA, at 23 CFR part 635, currently has regulations regarding guaranty and warranty clauses. The interim revisions would merely accommodate expanded use of warranty clauses on Federal-aid construction contracts. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this interim final rule on small entities. The FHWA concluded that this action would have no effect on small entities. The FHWA concludes that warranties will have little or no effect on the bonding capacity of small contractors, and that any additional cost associated with warranties will be minimal. Therefore, the FHWA hereby certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a separate Federalism assessment. Nothing in this document preempts any State law or regulation, and no new requirements or obligations are imposed on States or local governments by this action. Instead, this interim final rule provides States with additional discretion to determine for themselves whether to include warranty clauses in Federal-aid highway construction contracts for projects on the National Highway System.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: August 18, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Title 23, Code of Federal Regulations, part 635 by revising § 635.413 as set forth below:

PART 635—CONSTRUCTION AND MAINTENANCE [AMENDED]

Subpart D—General Material Requirements

1. The authority citation for part 635 is revised to read as follows and all other authority citations which appear throughout part 635 are removed:

Authority: 23 U.S.C. 109, 112, 113, 114, 116, 117, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b); §§ 635.410 and 635.417 are also issued under secs. 1019, 1041(a) and 1048, Pub. L. 102–240, 105 Stat. 1914; sec. 10, Pub. L. 98–229, 98 Stat. 55; sec. 165, Pub. L. 97–424, 96 Stat. 2136; sec. 112, Pub. L. 100–17, 101 Stat. 132.

2. Section 635.413 is revised to read as follows:

§ 635.413 Warranty clauses.

The SHA may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A SHA may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.

[FR Doc. 95–21115 Filed 8–24–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8615]

RIN 1545–AQ81

Special Rules for Determining Sources of Scholarships and Fellowship Grants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains a final Income Tax Regulation that provides guidance for determining the source of scholarships, fellowship grants, grants, prizes and awards. The final regulation will affect both individuals and withholding agents. It will provide guidance concerning whether scholarships, fellowships, other grants, prizes and awards are U.S. source income subject to tax and withholding.

DATES: This regulation is effective August 25, 1995.

For dates of applicability of these regulations, see *Effective dates* in § 1.863–1(d)(4).

FOR FURTHER INFORMATION CONTACT: David Bergkuist (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a final Income Tax Regulation (26 CFR part 1) under section 863 of the Internal Revenue Code. On June 15, 1993, a notice of proposed rulemaking (INTL 0041–92) was published in the **Federal Register** (58 FR 33060) (1993–2 C.B. 634). No public hearing was requested or held.

Written comments responding to the notice were received. After consideration of all of the comments, the regulation proposed under INTL–0041–92 is adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

Section 863(a) authorizes the Secretary to provide regulations regarding the source of items of gross income other than those items specified in sections 861(a) and 862(a). Rules for determining the source of scholarships, fellowship grants, grants, prizes and awards are not provided by sections 861(a) and 862(a).

The notice of proposed rulemaking proposed in § 1.863–1(d)(1) that scholarships and fellowship grants be sourced by reference to the status of the grantor. However, it also provided a special rule in § 1.863–1(d)(2) for nonresident aliens who receive scholarships or fellowship grants, as defined in the regulations under section 117, from U.S. grantors with respect to study or research activities to be conducted outside the United States. Under these circumstances, the scholarship or fellowship grant would be treated as income from sources outside the United States.

The final regulation adopts the proposed regulation with certain changes. Paragraph (d)(1) clarifies that these rules do not apply to salaries or other compensation for services.

The final regulation provides rules for sourcing scholarships and fellowship grants in paragraphs (d)(2) (i) and (ii) by reference to the status of the grantor. The special rule of paragraph (d)(2)(iii) provides that scholarships or fellowship grants received by a person other than a U.S. person for activities conducted outside the United States are treated as income from sources without the United States.

Commentators asked that the regulation be expanded to encompass grants that fall outside the scope of section 117. In addition, commentators also suggested that the special rule be expanded to include prizes and awards given to nonresident aliens for their past artistic, scientific, or charitable achievements. These suggestions are included in this final regulation.

The source of grants, prizes and awards is determined by reference to the status of the grantor under the general rules set forth in paragraph (d)(2) (i) and (ii). The term *grants* is defined in paragraph (d)(3)(iv) as amounts described in subparagraph (3) of section 4945(g) of the Code and the regulations thereunder and that are not otherwise scholarships, fellowship grants, prizes or awards as defined in § 1.863–1(d)(3). For purposes of paragraph (d)(3)(iv), the reference to section 4945(g)(3) is applied without regard to the identity of the payor or recipient and without the application of the objective and nondiscriminatory basis test and the requirement of a procedure approved in advance.

The term *prizes and awards* is defined in paragraph (d)(3)(iii) of this final regulation as having the same meaning as that set forth in section 74 and the regulations thereunder.

Under paragraph (d)(2)(iii), certain *targeted grants* and *achievement awards* received by a person other than a U.S. person for activities conducted outside the United States are treated as foreign source income. The term *targeted grants* does not appear elsewhere in the Code or the regulations. Targeted grants are a subset of the more inclusive term *grants.* Targeted grants may be received only from an organization described in section 501(c)(3), the United States, the States, or the District of Columbia and must be undertaken in the public interest without private financial benefit. The term *achievement award* does not appear elsewhere in the Code or regulations. An achievement award is an award issued by an organization described in section 501(c)(3), the United States, a State, or the District of Columbia for a past activity undertaken in the public interest and not primarily for the private financial benefit of a specific person or persons or organization.

Commentators requested that the final regulation provide express guidance for the issuance of scholarships or fellowship grants by agents on behalf of foreign grantors. No change is made in the final regulation because an actual payment made by a genuine agent of the payor does not alter the source. The final regulation looks to the status (i.e., whether the person is a U.S. person or a foreign person) of the payor rather than the agent.

The term *international agency* in paragraph (d)(1) of the proposed regulation has been replaced in the final regulation with the term *international organization* as defined in section 7701(a)(18). This clarification uses the Code definition for such organizations.

Comments were received regarding the proposed regulation suggesting that